***United States Court of Appeals***

***for the Second Circuit***


# APPELLEE'S BRIEF AND APPENDIX

74-2032

B

P/S

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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CIVIL ACTION NOS. 74-2032 - 74-2033

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ARCHIE CHESNEY

Plaintiff-Cross-Appellant

v.

JOHN R. MANSON, ET ALS

Defendants-Cross-Appellees

On Appeal from the United States District Court for the

District of Connecticut

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# BRIEF AND APPENDIX OF CROSS-APPELLEES

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ROBERT K. KILLIAN
ATTORNEY GENERAL
STEPHEN J. O'NEILL
ASSISTANT ATTORNEY GENERAL
340 Capitol Avenue
Hartford, Connecticut

PAGINATION AS IN ORIGINAL COPY

# I N D E X

TABLE OF CITATIONS

## STATEMENT OF ISSUES

1. Did the District Court err in dismissing plaintiff's claim that placement in the "strip" cell from February 29 - March 2, 1972, and from March 14 - March 17, 1972, constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution? Did the District Court also err in finding Plaintiff's claim for injunctive relief moot?

2. Did the District Court err in dismissing plaintiff's claim that the injection of plaintiff with thorazine without prior examination by a doctor and the placement in the strip cell on October 23, 1971 constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

3. Did the District Court err in dismissing plaintiff's claim that incarceration in administrative segregation for twenty-two days constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

4. Did the District Court err in denying plaintiff damages?

## STATEMENT OF THE CASE

This is a cross-appeal from a judgment of the United States District Court for the District of Connecticut (Judge Jon O. Newman) dismissing all of the plaintiff's claims except for his claim for a declaratory judgment that Section 17-194a, Connecticut General Statutes, was unconstitutional. The claims dismissed will be covered below.

The original judgment of the District Court was dated June 26, 1974, (See Document No. 55 of Index to Record on Appeal).

Thereafter, upon the consideration of the oral motion of the defendants for a stay or modification of said judgment, the District Court entered an amended judgment dated July 17, 1974, which amended paragraph two of the June 26, 1974, judgment and declared Section 17-194a, Connecticut General Statutes, to be unconstitutional to the extent that it authorize transfer of prisoners to mental health facilities under any conditions or circumstances that could not be used with non-prisoners. (See Document No. 57 of Index to Record on Appeal).

That portion of the June 26, 1974, judgment which dismissed all other claims was not amended.

The defendants, in the District Court, appealed from that portion of the judgment of the District Court which declared Section 17-194a, Connecticut General Statutes, to be unconstitutional.

The plaintiff, in the District Court, filed a cross-appeal from that

portion of the judgment which dismissed all other claims.

The defendants then filed their brief in this Court directed to the issue of the constitutionality of Section 17-194a.

Since the scheduling order issued by Staff Counsel called for the defendants to file their brief first it was not possible to brief the issues raised by the plaintiff in his cross-appeal. Therefore, those issues are now presented in this reply brief.

Following the filing of their brief on the constitutionality of Section 17-194a, the defendants have, in effect, withdrawn their appeal on that issue and the parties have filed a stipulation for dismissal pursuant to Rule 42(b), Federal Rules of Appellate Procedure.

Therefore, the ruling of the District Court on the constitutionality of Section 17-194a is not an issue now before this Court.

On June 4, 1971, the plaintiff was convicted of the crime of murder in the second degree and was sentenced to a term of life imprisonment. (See Paragraph IVA of the Substituted Amended Complaint - Document No. 44 of the Index to Record on Appeal). The defendants are various officers of the Connecticut Department of Corrections.

Except for those periods when he had been transferred to a mental health facility administered by the Department of Mental Health of the State of Connecticut, he has been confined in the Connecticut Correctional Institution, Somers, hereinafter referred to as Somers. The periods of his confinement in a mental health facility were from January 19, 1973, to April 4, 1973 and from

April 27, 1973, to May 7, 1973 (See Tr. I, pp. 64-65).*

In the District Court the plaintiff made a number of claims that he was denied federally protected rights within the purview of 42 U.S.C.1983. By way of relief he sought an injunction enjoining future occurrence of the actions which he claimed unlawful and money damages in the amount of two hundred fifty thousand dollars ($250,000.00) as well as attorney fees and costs.

These claims, all of which were dismissed by the District Court, and which are the only issues now before this Court are as follows:

1. Did the District Court err in dismissing plaintiff's claim that the injection of plaintiff with thorazine without prior examination by a doctor and the placement in the strip cell on October 23, 1971 constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

2. Did the District Court err in dismissing plaintiff's claim that incarceration in administrative segregation for twenty-two days constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

* Tr. I refers to the transcript of the proceedings of May 9, 1973 and May 11, 1973, consisting of a total of 162 pages in two volumes. Tr. II refers to the transcript of the proceedings of July 10, 1973, consisting of 74 pages in one volume.

3. Did the District Court err in dismissing plaintiff's claim that placement in the "strip" cell from February 29 - March 2, 1972, and from March 14 - March 17, 1972, constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution? Did the District Court also err in finding Plaintiff's claim for injunctive relief moot?

4. Did the District Court err in denying plaintiff damages?

## A R G U M E N T

### I.

### THE INCIDENT OF OCTOBER 23, 1971

Chronologically, at least, the first set of claims made by the plaintiff spring from his removal to a so-called "strip cell" on October 23, 1971.

At the time of this incident Dr. Edward Palomba was a general physician employed at Somers. (Tr. II, pp. 12-13) Dr. Palomba testified as follows:

At 3:00 a.m. on October 23, 1971, the hospital attendant at Somers was called to the plaintiff's cell by a correctional officer because of the plaintiff's behavior. (Tr. II, p. 13) This attendant is a male nurse with twenty-five years of experience in the Navy as a medic. (Tr. II, p. 52) The attendant telephoned Dr. Palomba and reported that the plaintiff was acting out, quite hostile, yelling and climbing the bars of his cell. (Tr. II, p. 14, p. 50, p. 53 and Defendants' Exhibit A, page 8 of Appendix of Cross-Appellant).

Dr. Palomba ordered that the plaintiff be given a major tranquilizer (Thorazine) to calm him down. (Tr. II, p. 14) This seemed to quiet the plaintiff for a short time, however, he finally had to be moved to a strip cell in the Somer's hospital and given a second shot of Thorazine. (Tr. II, pp. 14-17).

It was reported to Dr. Palomba that the plaintiff was striking correctional officers. (Tr. II, p. 16).

Dr. Palomba ordered the administration of Thorazine and the removal of the plaintiff to a strip cell. (Tr. II, p. 14) The circumstances of confinement in this strip cell will be covered later in this brief. They are not pertinent to this incident since the plaintiff was in this cell for only five and one-half hours at this time.

The doctor's reason for his order to so move the plaintiff was to protect the plaintiff from injuring himself and to protect the Somers staff from injury from the plaintiff. (Tr. II, p. 14).

The plaintiff was confined in this strip cell for approximately five and one-half hours, most of which time he was asleep, and was then moved to a regular hospital room. (Tr. II, pp. 17-18).

During this five and one-half hour period the plaintiff was handcuffed. Dr. Palomba did not order the placing of handcuffs on the plaintiff but he did order their continued placement until the plaintiff became well oriented and rational. (Tr. II, p. 34).

The plaintiff's principle claim with regard to this incident is that Dr. Palomba should have come to Somers and examined the plaintiff prior to issuing the orders which he issued. In fact, the plaintiff claims that the failure to personally examine the plaintiff before issuing these orders was so barbarous and shocking as to constitute cruel and unusual punishment within the purview of the Eighth Amendment.

The plaintiff offered no medical testimony on this claim and his assertion is contrary to all of the medical testimony in the record.

Dr. Palomba saw nothing improper in issuing these orders based upon a telephone report from an experienced medic. (Tr. II, pp. 34-35).

Dr. David Hedberg who is a psychiatrist and the Director of Psychiatric Services for the Department of Corrections (Tr. II, pp. 54-55) testified that it was medically proper to issue such orders based upon a telephone report from a nurse or an attendant. (Tr. II, pp. 60-62 and 65-66).

Dr. Hedberg further testified that the practices employed in this incident were quite similar to those which would have been employed in a non-correctional institution except that leather restraints, perhaps, would be used in place of handcuffs. (Tr. II, pp. 55-57).

Dr. Van der Werff, who is also a psychiatrist (Tr. I, p. 31) testified that it would have been "negligent" not to administer Thorazine to the plaintiff under the circumstances. (Tr. I, pp. 40-41).

In Church v. Hegstrom, 416 F.2d 449, 450-451 (2nd Cir. 1969), this Court held that:

> "Whether a complaint claiming failure to provide medical care is deemed to allege a denial of Fourteenth Amendment rights, McCollum v. Mayfield, 130 F.Supp. 112, 115 (N.D.Cal.1955); ef. Hirsons v. Patuxent Institution, 351 F.2d 613, 614 (4 Cir. 1965), or cruel and unusual punishment violating the Eighth Amendment, Wright v. McMann, supra; Coppinger v. Townsend, 398 F.2d 392, 393 (10 Cir. 1968), it must suggest the possibility of some 'conduct that shocks the conscience,' Rochin v. California, 342 U.S. 165, 172, 72 S.Ct. 205, 96 L.Ed. 183, 25 A.L.R.2d 1396 (1952), or 'barbarous act,' Robinson v. California, 370 U.S. 660, 676, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962) (Douglas, J., concurring); Beard v. Lee, 396 F.2d 749 (5 Cir. 1968) Mere negligence in giving or failing to supply medical treatment alone will not suffice, since all rights existing under state law are not also federal rights carrying a federal remedy. Bradford Audio Corp. v. Pious, 392 F.2d 67, 72 (2 Cir. 1968)."

See also: Martinez v. Mancusi, 443 F.2d 921 (2nd Cir. 1970), cert. denied, 401 U.S. 983, 91 S.Ct. 1202, 28 L.Ed.2d 335 (1971).

It is impossible to see how the treatment of the plaintiff in this incident of October 23, 1971 can be characterized as "...so shocking as to constitute a denial of due process prohibited by the Fourteenth Amendment or a cruel and unusual punishment forbidden by the Eighth Amendment, selectively incorporated into the Fourteenth." Startz v. Cullen, 468 F.2d 560, 561 (2nd Cir. 1972).

Such a conclusion would be totally contrary to all of the medical testimoney in this case.

The plaintiff's claim that Judge Newman clearly erred in concluding that both injections of Thorazine followed the medic's call to Dr. Palomba is not

substantiated by the record.

As set forth above, Dr. Palomba testified that he ordered the Thorazine. He testified that the medic reported the plaintiff's behavior. He did not testify that the medic reported administering Thorazine.

In any event, in view of the unanimous medical testimony concurring in the administration of Thorazine including Dr. Van der Werff's statement that it would have been "negligent" not to do so, the plaintiff's claim in this regard is meritless.

Defendants' Exhibit A containing the plaintiff's medical reports certainly shows an abundance of medical care.

Lastly, the only symptom which the plaintiff complained of because of the Thorazine was dryness of the mouth or tongue, which did not reoccur with later injections of Thorazine in larger amounts. (Tr. II, p. 36).

Judge Newman's dismissal of this claim should be affirmed.

## II.

## CONFINEMENT IN ADMINISTRATIVE SEGREGATION DURING THE PERIOD FROM APRIL 4 TO APRIL 26, 1973

The plaintiff was confined in a mental health facility administered by the Connecticut Department of Mental Health during the period from January 19, 1973, to April 4, 1973. (Tr. I, pp. 54-55).

He was returned to Somers on the latter date. Two weeks prior to his

return by letter dated March 20, 1973, the Commissioner, John R. Manson, was advised by Attorney Edward Kunin that he represented the plaintiff on his appeal from his conviction for second degree murder and that the plaintiff "...has indicated that he fears for his personal safety if he is returned to Somers, and requests that should he be released from the Security Treatment Center, that he be sent to a prison other than Somers." (See Plaintiff's Exhibit No. 5, p. 1 of Appendix of Cross-Appellees-Defendants).

This letter was referred to then Deputy Commissioner of Institution Services, Robert Kowalczyk, who replied to Attorney Kunin by letter dated March 27, 1973. (See Defendants' Exhibit D, p. 2 of Appendix of Cross-Appellees-Defendants).

In his letter, Mr. Kowalczyk advised Attorney Kunin that "In the event that your client, Mr. Chesney, is tranferred from the Security Treatment Center in Middletown back to the Connecticut Correctional Institution, Somers, he would be withheld from general population until such time as his fears are verified and if verified, a transfer arranged."

Attorney Kunin responded with a letter to Mr. Kowalczyk dated April 2, 1973 (Plaintiff's Exhibit No. 4, p. 3 of Appendix of Cross-Appellees-Defendants).

In his letter Attorney Kunin stated, in part, that Chesney's fears were of the staff at Somers and not inmates. That several inmates had been found hanged and that Chesney believed that not all of these hangings are suicide.

The letter concluded with a threat to hold the department accountable in the event that Chesney met with foul play.

When the plaintiff returned to Somers he was placed in administrative segregation until April 26, 1973.

The problem confronting the defendants as a result of these letters from Attorney Kunin is well stated by Judge Newman at Tr. I, p. 150, when he noted "There is certainly a risk here that the attorney by making this request puts the prison in quite a dilemma. He says he is fearful, if they leave him at large and something happens, he is going to say 'I told you so;' and if they take any kind of precautionary action you're going to say its punative. What's the prison to do?".

The plaintiff was placed in Administrative Segregation for his own safety and in order to investigate the claims and fears expressed in the letters from Attorney Kunin. (Tr. I, pp. 130-133, testimony of Captain Plonski).

During the trial, Judge Newman noted from the Bench that "They didn't put him there to penalize him for having done something. Their claim is and its really undisputed on the record, they put him there in response to the attorney's letter that said he was --he had fears for his personal safety." (Tr. I, p. 149, underlining added).

There is no evidence indeed, not even a claim that the plaintiff's confinement in administrative segregation was motivated in terms of punishment or discipline.

With regard to the atmosphere of prison life and its attendant requirements

for security, the Supreme Court has recently observed:

> "Although there are very many varieties of prisons with different degrees of security, we must realize that in many of them the inmates are closely supervised and their activities controlled around the clock. Guards and inmates co-exist in direct and intimate contact. Tension between them is unremitting. Frustration, resentment, and dispair are commonplace."
>
> Wolff v. McDonnell, 94 S.Ct. 2963, 2977 (1974).

See also: Edward v. Sard, 250 F.Supp. 977, 981 (D.D.C. 1966), where the Court held that "The association between men in correctional institutions is closer and more fraught with physical danger and psychological pressures than is almost any other kind of association between human beings." Quoted with approval by this Court in Sostre v. McGinnis, 442 F.2d 178, 197 (2nd Cir. 1971), cert. denied sub nom. Oswald v. Sostre, 405 U.S. 978 (1972).

The plaintiff stresses that prior to his actual return to Somers, Attorney Kunin wrote his letter of April 2 to the effect that administrative segregation was inappropriate; Chesney's fears for his life were claimed to arise from staff and not inmates.

The defendants' claim that when an attorney communicates that his client is fearful for his life and threaten to call for an accounting, if any harm comes to his client, then the Department of Correction is entirely justified in placing the man in administrative segregation in order to protect him while the claim is investigated.

Attorney Kunin has no expertise in operating a correctional institution

and his opinion that segregation was not called for should be considered with this lack of experience in mind.

In Christman v. Skinner, 468 F.2d 723, 725 (2nd Cir. 1972), the Court rejected a prisoners due process claim for the reason that the prisoner's confinement was "...not so much intended as a punishment as it was designed to preserve order in the jail."

If the preservation of order is permissible, then the protection of a prisoner's life must be as well.

Further, the conditions of the plaintiff's confinement were, except for recreation and exercise, the same as his circumstances in general population. This cell had a toilet, sink, bedding, reading material, etc. (Tr. I, pp. 129-130).

In fact, in terms of being observed, the plaintiff's confinement in administrative segregation offered much greater security to him then his confinement in general population. (Tr. I, pp. 128-129).

The plaintiff's confinement was the same as that sustained in Sczerbaty v. Oswald, 341 F Supp. 571 (S.D.N.Y. 1972).

In view of the fears expressed by Attorney Kunin and the difficulty in locating a cell in general population once these warnings had been investigated (Tr. I, pp. 145-146) the plaintiff's confinement in administrative segregation was entirely warranted and Judge Newman's decision, in this regard, should be affirmed.

III

CONFINEMENT IN A HOSPITAL STRIP CELL
FROM FEBRUARY 29, 1972 TO MARCH 2, 1972 AND
FROM MARCH 14, 1972 TO MARCH 17, 1972

In LaReau v. MacDougall, 473 F.2d 974, 978 (2nd Cir. 1972) cert. denied, 414 U.S. 878, 94 S.Ct. 49 (1973), this Court held that:

> "What is most offensive to this Court was the use of the 'Chinese toilet'. Causing a man to live, eat and perhaps sleep in close confines with his own human waste is too debasing and degrading to be permitted. The indecent conditions that existed in this Somers prison strip cell seriously threatened the physical and mental soundness of its unfortunate occupant. In order to preserve the human dignity of inmates and the standards of humanity embraced by our society, we cannot sanction such punishment."

Under the circumstances pertaining to LaReau's confinement in a strip cell the majority of the Court held such confinement to be cruel and unusual punishment within the purview of the Eighth Amendment. The Court did note, however, that:

> "Even if the strip cell could be justified for serious offenses, it was a grossly severe penalty for LaReau's offense. The possession of contraband, even contraband which might conceivably be an instrument of escape, is not sufficiently culpable to justify the extreme deprivations to which LaReau was subjected in the strip cell. Indeed, prison officials admitted at trial that the strip cell normally is reserved for such serious offenses as fighting or rioting."
>
> LaReau v. MacDougall, supra, p. 978, Footnote 6.

This Court decided LaReau on December 15, 1972. The plaintiff in the case now before the Court was confined in a hospital strip cell in February and March of 1972, long before this Court's decision.

During the period of the plaintiff's confinement, the decision of Judge Clarie with regard to confinement in a strip cell was still good law. LaReau v. MacDougall, 354 F.Supp. 1133 (D. Conn. 1971).

Good faith is a defense in an action under 42 U.S.C. 1983. Pierson v. Ray, 386 U.S. 547, 557, 87 S.Ct. 1213, 1219 (1967).

Certainly the defendants cannot be held accountable for not anticipating this Court's reversal of Judge Clarie on this point.

Further, the reasons for confining this plaintiff in a strip cell were far different than those found to be insufficient in LaReau.

On February 29, 1972, this plaintiff was admitted, on Dr. Van der Werff's order, which stated "Admit to hospital for mental observation. Paranoid, hostile attitude, appears to be clearly disoriented making inappropriate statements." The order further stated to maintain the plaintiff in a strip cell. (Tr. II, p. 37).

According to Dr. Palomba's interpretation of this record, the plaintiff was acting out so severely that his blood pressure, pulse and temperature could not be taken. (Tr. II., pp. 40-42).

On March 19, 1972, the plaintiff was again admitted to the hospital strip cell on Dr. Van der Werff's order which noted in part that the confinement involved "disturbed behavior" of the plaintiff. (Tr. II, p. 43).

LaReau's confinement was in a strip cell in the segregation area of the prison. This plaintiff was confined in the hospital strip cell.

LaReau was not confined on a psychiatrist's orders as was this plaintiff. The plaintiff's confinement was for "therapeutic" reasons. (Tr. I, p. 46).

LaReau was confined as punishment and the plaintiff was regularly seen, while so confined, by either a physician, psychiatrist or a psychologist. (Tr. I, p. 47).

The only condition of the plaintiff's confinement is the oriental toilet which the Court found constitutionally offensive in LaReau. There was no evidence to show that Chesney's meals, or bedding were in any way deficient or that the physical condition of the cell in terms of heat, lighting, ventilation, etc. were in any way improper.

Confinement under circumstances very similar to those of Chesney is commonly used in private mental hospitals. (Tr. I, pp. 50-51, testimony of Dr. VanderWerff), and (Tr. II, pp. 67-68, testimony of Dr. Hedberg).

All of the medical testimony was to the effect that Chesney's confinement was necessary and proper.

Lastly, at the conclusion of the trial the Court was invited to view the cell. (Tr. II, p. 69). The Court apparently did not feel that this was necessary, but rather inquired as to whether or not the defendants had in mind

any change in procedures with regard to the use of this cell. (Tr. II, p. 69).

Pursuant to the Court's inquiry, the Commissioner of Corrections filed an Affidavit with the Court setting forth the present applicable procedures. (See pp. 4-5 of the Appendix of Cross-Appellees-Defendants).

The defendants emphasize that they by no means concede that the policies set forth in Commissioner Manson's Affidavit are constitutionally required. Nor do the defendants concede, rather they claim, that the treatment afforded Chesney was in all respects not only constitutional but also humane and professional.

Judge Newman's decision on this claim should be sustained.

## IV

## THE DISTRICT COURT DID NOT ERR IN DENYING DAMAGES

As noted previously, the defendants have withdrawn their appeal from that portion of Judge Newman's decision which dealt with Section 17-194a, Connecticut General Statutes. Since the ruling in the District Court the defendants have employed committment procedures for prisoners which are identical in all relevant respects to commitment procedures required for non-prisoners.

The plaintiff claims that the decision of the District Court in this regard should have been anticipated because of United States ex rel. Schuster v. Herold, 410 F.2d 1071 (2nd Cir. 1969) cert. denied, 396 U.S. 847 (1970).

This case is not like Schuster where a prisoner who, in all probability was sane, suffered decades of added confinement and sundry other grevious injuries.

Each of the plaintiffs two transfers to a mental health institution were based upon the order of Dr. VanderWerff who is a psychiatrist. (See Defendants' Exhibits B and C, pp. 6 and 7 of the Appendix of Cross-Appellees-Defendants).

There was absolutely no evidence, indeed no claim, that the evaluations and recommendations in Exhibits B and C were not medically sound and proper. There is no evidence that the plaintiff's confinement in a mental health institution was not proper.

There was not even any evidence to show that the plaintiff suffered any hardships because of these transfers.

The appellees claim concerning the affect their transfer had on his parole is without merit. The plaintiff is serving a life sentence. Pursuant to the provisions of Section 54-125, Connecticut General Statutes, he must serve a minimum of twenty years before he is eligible for parole. Hence, this eligibility is some seventeen years in the future.

Judge Newman denied damages. The defendants acted in good faith, pursuant to a statute which had not then been declared invalid. The defendants should not be held accountable for anticipating the decision of the District Court. Tucker v. Maher, 497 F.2d 1309 (2nd Cir. 1974). The decision of Judge Newman on this issue should be affirmed.

## C O N C L U S I O N

For the foregoing reasons the defendants-cross-appellees respectfully request that this cross-appeal be dismissed in its entirety.

CROSS - APPELLEES

ROBERT K. KILLIAN
ATTORNEY GENERAL

BY: STEPHEN J. O'NEILL
ASSISTANT ATTORNEY GENERAL
340 Capitol Avenue
Hartford, Connecticut

## C E R T I F I C A T I O N

A copy of the foregoing has been served by mail, postage prepaid, on Michael J. Churgin, Stephen Wizner, and Dennis E. Curtis, Esqs. 127 Wall Street, New Haven, Connecticut, this 27th day of December, 1974.

STEPHEN J. O'NEILL
ASSISTANT ATTORNEY GENERAL

# A P P E N D I X

EDWARD F. KUNIN
ATTORNEY AT LAW
265 GOLDEN HILL STREET
SUITE 304
BRIDGEPORT, CONNECTICUT 06604
(203) 335-7383

March 20, 1973

Mr. John R. Manson
Commissioner of Corrections
Hartford, Connecticut

Dear Mr. Manson:

I have been appointed Special Public Defender for Archie Chesney on his appeal from conviction of second degree murder charge. The appeal is presently pending and during the course of the appeal Mr. Chesney was transferred from Somers to the Security Treatment Center at Middletown.

Mr. Chesney has indicated that he fears for his personal safety if he is returned to Somers and requests that should he be released from the Security Treatment Center, that he be sent to a prison other than Somers. The request does not appear to me to be unreasonable and I believe it would be within your power to grant it.

May I expect your prompt advice.

Very truly yours,

Edward F. Kunin

EFK:ef

cc: Archie Chesney

March 27, 1973

Edward F. Kunin, Esq.
Attorney at Law
285 Golden Hill Street
Suite 208
Bridgeport, Connecticut 06604

Dear Mr. Kunin:

Your letter of March 20, 1973 to Commissioner Manson has been referred to my office.

In the event that your client, Mr. Chesney, is transferred from the Security Treatment Center in Middletown back to CCI-Somers, he would be withheld from general population until such time as his fears are verified, and if verified, a transfer arranged.

Very truly yours,

Robert F. Kowalczyk
Deputy Commissioner of Institution Services

RFK/cdp

bcc: Commissioner Manson
Warden Robinson

2

EDWARD F. KUNIN
ATTORNEY AT LAW
285 GOLDEN HILL STREET
SUITE 208
BRIDGEPORT, CONNECTICUT 06604
(203) 335-7393

April 2, 1973

Robert F. Kowalczyk
Deputy Commissioner of
Institution Services
340 Capitol Avenue
Hartford, Conn. 06106

Dear Mr. Kowalczyk: Re: Archie Chesney

In answer to your letter of March 27th I must confess that I do not understand what is about to happen to Mr. Chesney.

If he is withheld from the general population, I assume he will be placed in some sort of segregation. You mentioned "verifying his fears". I am not sure how this could be accomplished, especially since Mr. Chesney's fears concern the staff of Somers and not the inmates. I understand there was one incident where drugs were forcibly administered to Mr. Chesney and because he refused to take drugs, he was beaten by the guards. I am told that a suit based on this incident is pending in the federal court. In view of this, I cannot see why Mr. Chesney's request cannot be granted.

Mr. Chesney tells me that several inmates have been found hanged and he believes that not all of these hangings are suicide. I can only state that should Mr. Chesney be found hanging, or should he meet with some sort of foul play at the hands of the guards, your department would be held accountable. In the meantime, I would appreciate learning exactly what circumstances you are looking for before a transfer can be arranged.

Very truly yours,

Edward F. Kunin

EFK:ef
cc: Archie Chesney

3

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| ARCHIE CHESNEY | : | CIVIL NO. 15[illegible]8 H-20 |
| v. | : | |
| FREDERICK ADAMS, ET AL | : | A F F I D A V I T |

I, JOHN R. MANSON, being duly sworn, depose and say that:

1. I am the Commissioner of the Department of Corrections for the State of Connecticut.

2. The following persons are authorized to release patients from the so-called "strip cell" located in the hospital at the Connecticut Correctional Institution, Somers:

a. Any member of the Mental Hygiene staff. This staff consists of the following: A Director who is a Clinical Psychologist, two psychologists, a full-time Psychiatrist, four consultant (part-time) Psychiatrists.

b. In addition, three full-time physicians also have this authority.

3. It is the standard procedure at the Connecticut Correctional Institution, Somers that any patient confined in a hospital so-called "strip cell" is seen by one of the staff members delineated in Paragraph 1 above at least daily except on weekends and some holidays.

4. In addition, one of the consulting psychiatrists is available on Saturdays at the hospital and other consultant psychiatrists are often at the hospital on holidays. In addition, at least one of the three full-time physicians is always on call and the full-time psychiatrist is always on call. Further, the Mental Hygiene staff may on a Friday leave instructions with hospital staff in charge over the weekend that a given psychiatric patient may be released from a so-called "strip cell", if prescribed behavior is observed.

5. At the time that this case was tried in this Court there were two so-called "strip cells" at the hospital at the Connecticut Correctional Institution, Somers. By so-called "strip cell" I mean a cell without furnishings and equipped with a so-called "oriental toilet".

6. As of this date, one of these two cells is now fully equipped with a commode and sink. Installation of a commode and sink is under way in the second cell and this installation is expected to be completed as of March 1, 1974.

7. Therefore, [illegible] are no inmate will be placed in a cell without a commode and sink. No[illegible] if an inmate abuses these facilities, for example, flooding his cell, destroying appliances or, if in the judgment of the staff the availability of these facilities is somehow dangerous to him or to others, then measures will have to be taken to restrict the use of these facilities.

8. Insofar as the bedding is concerned, any inmate in such cells are provided with bedding consisting of at least a mattress and blankets unless in the opinion of the medical staff the availability of this bedding might be used by the inmate to injure himself or others.

9. As of March 1, 1974, there will be no so-called "strip cells" either in the hospital or in the segregation unit, in that all cells will be equipped with toilets and sinks.

I have read the foregoing and it is all true to the best of my knowledge and belief.

JOHN R. MANSON, COMMISSIONER
DEPARTMENT OF CORRECTIONS

Subscribed and sworn to before me this 26th day of February, 1974.

STEPHEN J. CAMPBELL
COMMISSIONER OF SUPERIOR COURT

(6)

ER (Under 1972 Conn. P. A. 145, Sec. 3c)
MENTAL HOSPITAL & SECURITY TREATMENT CENTER

Prepare in quadruplicate. Distribution: White—Comm[illegible]ner of Mental Health; Yellow—Sending Institution; Pink—R[illegible]ving Institution; and Green—Court of Jurisdiction.

.ssioner of Mental Health, State of Connecticut

**TRANSFER**

FROM (Sending Institution): CONNECTICUT CORRECTIONAL INSTITUTION, SOMERS
DATE ADMITTED: 6/4/73
TO [illegible]: NORWICH STATE HOSPITAL
DATE ADMITTED:

**PATIENT**

FULL NAME (Last, First, Middle): CHESNEY, ARCHIE #24772
RELIGION: PROTESTANT
DATE OF BIRTH: 12/8/42

**INTERESTED PARTIES**

NAME & ADDRESS OF CORRESPONDENT (If applicable):
TEL. NO.
NAME & ADDRESS OF NEXT OF KIN (If applicable):
TEL. NO.

**PHYSICIAN'S STATEMENT**

LEGAL STATUS OF PATIENT (Cite Statute): 17-194A from Connecticut Correctional Center, Somers

CURRENT MEDICATION: Stelazine - 10 mgs at D
Seconal - ½ gr. at D
Hour (4 nights written 1/18/73 - before that no medication since March.)

CLINICAL REASONS FOR TRANSFER: Chesney is a 30 yr. old black male sentenced in June of 1971 for Life for the crime of Murder in the second degree. Since admission to the prison he has manifested psychotic behavior on a number of occasions for which he was treated and responded to positively. These episodes were of a severe paranoid nature. Patient has refused continuing treatment after remission from these episodes due to his paranoid ideation. Recently he has manifested a reoccurrence of these symptoms: i.e. fear of aggressive assault, inappropriate thoughts and actions. He is in need of intense and consistent treatment in the STC. It is anticipated that he will rapidly stabilize after short term therapy and may be returned to the prison when he is able to function effectively in this environment.

1/19/73 | JACOB A. VAN DER WERFF | SIGNED (Physician) [signature] 10112 M

**CAUTIONS** (Suicidal, assaultive, etc.)

**COURT REPORTS** DUE (Date or Time Period)

**KEY COMMUNITY RELATIONSHIPS**

**SPECIAL CONDITIONS**

OTHER REMARKS, IF ANY

(6)

**AUTHORIZATION**

We, the undersigned, agree to the transfer, as described above, of the patient named above. Such transfer is hereby authorized with the approval, or by the delegation of the authority, of the Commissioner of Mental Health, as embodied in the General Statutes of the State of Connecticut, under the Section stated above.

[illegible] | [illegible] | [illegible] | SIGNED (Superintendent, Sending Institution)

(7)

# TRANSFER (Under Sec. 17-194a of Conn. G. S.)

...EEN CORRECTIONAL INSTITUTION & STATE MENTAL HOSPITAL

...1-58 Rev. 6/72

**TO:** Commissioner of Mental Health, State of Connecticut

*Prepare in quadruplicate. Distribution: White—Comm Mental Health; Yellow—Sending Institution; Pink—I Institution; and Green—Court of Jurisdiction.*

**TRANSFER**

FROM (Sending Institution): Connecticut Correctional Institution, Somers — DATE ADMITTED: 4/1/73

TO (Receiving Institution): Norwich State Hospital - Security Treatment Ctr. — DATE ADMITTED:

**INMATE**

FULL NAME (Last, First, Middle): Cheaney, Archie #24772 — RELIGION: Protestant — DATE O: 12/3

If accused — COURT STATUS:

If already sentenced — UNDER SENTENCE OF (Court): Fairfield — FOR TERM OF: Life — TERM TO EXPIRE ON (Da: Life

ON COUNT(S) OF: Murder, Second Degree

**PHYSICIAN'S STATEMENT**

EXAMINATION DATE: 4/27/73 — PLACE OF EXAMINATION (Institution and Town): Conn. Correctional Institution, Somers — PHYSICIAN'S TOWN OF R: Hartford, C

REASONS FOR OPINION:

On 4/26/73 Cheaney was admitted to the prison hospital from th segregation unit. He was actively hallucinating and delusional His mood swung precipitously from overtly friendly to warily su picious. He spoke of fears of being made to disappear from the powers of Allah or the Emperor. He at times grasped the examin affectionately to reassure him of his own presence; at other ti he cowered warily in the chair, anticipating harm. The precipi tating factor here appeared to be the deprivation or isolated condition in which he was maintained; i.e. segregation. Cheane at this time, is clearly psychotic and in need of immediate treatment.

I certify, after a personal examination of the person named above and for the reasons stated, that such person:

☐ Is in need of immediate care and treatment in a state hospital for the mentally ill.

☐ Is no longer in need of such care and tre and may be returned to a correctional ins

| DATE | CONN. MED. LIC. NO. | PHYSICIAN'S NAME | SIGNED (Physician) |
|---|---|---|---|
| 4/27/73 | 10112 | Jacob A. Van der Werff, M.D. | |

**SUMMARY OF CRIMINAL RECORD**

*For complete criminal history see attached Admission Summary.

(7)

**CONCURRENCE OF HOSP. SUPT.**

OBTAINED BY (Phone, letter, etc.) — ON (Date)

**AUTHORIZATION**

We, the undersigned, agree to the transfer, as described above, of the person named above. Such transfer is hereby au ized with the approval of, or by the delegation of the authority of, the Commissioner of Mental Health, as embodied in General Statutes of the State of Connecticut, under the Section stated above.

| Sending Institution | DATE | NAME OF AUTHORIZED OFFICIAL | SIGNED (Authorized Official) |
|---|---|---|---|
| | 4/27/73 | Carl Robinson, Warden | |